

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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Ratesetting

July 2, 2021

TO PARTIES OF RECORD IN APPLICATION 20-10-004:

This is the proposed decision of Administrative Law Judge Michelle Cooke. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 5, 2021 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:li1

Attachment

Decision **PROPOSED DEICISON OF ALJ COOKE** (Mailed 7/2/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SAN GABRIEL VALLEY
WATER COMPANY (U337W) for an
Order Authorizing the Purchase of the
City of Montebello's Water System
Assets and related Approvals.

Application 20-10-004

DECISION DENYING APPLICATION WITHOUT PREJUDICE**Summary**

This decision denies without prejudice the application of San Gabriel Valley Water Company (San Gabriel) to purchase the City of Montebello's Water System. The decision finds that the City of Montebello failed to comply with the statutory requirements of Government Code § 37420.5 and Public Utilities Code § 10061. Compliance with Government Code § 37420.5 and Public Utilities Code § 10061 are prerequisites for the Commission to authorize the proposed acquisition by San Gabriel; in turn, the decision concludes that the application therefore must be dismissed. Because the application is dismissed based on a threshold legal question, this decision does not reach consideration of the proposed sale on the merits. Consequently, the application is denied without prejudice. Application 20-10-004 is closed.

1. Background

Pursuant to Public Utilities (Pub. Util.) Code §§ 2718-2720, San Gabriel Valley Water Company (San Gabriel) filed Application (A.) 20-10-004 (Application) on October 2, 2020. The Application seeks Commission authorization of the sale of the City of Montebello (Montebello or City) water system assets to San Gabriel (Proposed Acquisition) pursuant to an Agreement for Purchase and Sale of Water System Assets and Lease of Water Rights between San Gabriel and Montebello dated September 29, 2020 (Asset Purchase Agreement).

The Application also requests that the Commission:

- Authorize expansion of San Gabriel's Certificate of Public Convenience and Necessity (CPCN) for its Los Angeles (L.A.) County division to include current Montebello water system (MWS) customers who are not already located within the boundaries of the existing L.A. County division;
- Establish the rate base for the acquired MWS to be the full purchase price of \$15,857,000;
- Authorize incorporation of the established rate base for the acquired system into the L.A. County division for ratemaking purposes in San Gabriel's next general rate case; and
- Find that it is just and reasonable to charge customers of the acquired MWS the rates and charges for water utility service that are currently in effect for all L.A. County division customers at the time of closing of the Proposed Acquisition.

San Gabriel is a Class A public utility water company engaged in the business of producing, treating, storing, distributing, and selling water to approximately 97,300 customers in two operating divisions (the L.A. County

division and the Fontana Water Company division) in portions of Los Angeles County and San Bernardino County, subject to the Commission's jurisdiction.

MWS is a publicly-owned, municipal water system, largely located within Montebello's boundaries but also serving approximately 125 non-residential customers located in the cities of Commerce and Rosemead. The City's water system provides service to approximately 1,650 customers, approximately 650 of which are already located within the boundaries of San Gabriel's existing L.A. County division service area. Since 2013, San Gabriel's L.A. County division employees have operated MWS under an operating agreement between San Gabriel and Montebello.

The Application notes that MWS has been operating at a significant deficit since at least 2007, "due in large part to increased costs of imported water, operations, maintenance, and necessary capital improvements."¹ The Application asserts that despite significant water rate increases totaling 75% in 2013 and 2014, and additional increases totaling 30% in 2017, the City would need to implement further rate increases to begin restoring financial stability to the City's water system and to ensure safe and reliable public water utility service.² Furthermore, in May 2020, "Polyfluoroalkyl (PFAS) substances were detected in the groundwater supply well used to supply the southern portion of the City's water system."³ Treating the PFAS-contaminated water supply will require Montebello to make additional capital investments, some of which may be offset by grant funding if available.⁴

¹ Application at 9.

² *Ibid.*

³ *Ibid.*

⁴ Application at 9-10.

The Public Advocates Office of the California Public Utilities Commission (Cal Advocates) filed a timely protest on November 16, 2020. Cal Advocates' protest raised questions regarding the Application's compliance with statutory requirements – specifically whether the Proposed Acquisition complied with Pub. Util. Code § 10061 and Government Code (Gov. Code) § 37420.5 – as well as a number of substantive and ratemaking issues.

San Gabriel filed a reply on November 25, 2020. In it, San Gabriel agreed that Cal Advocates' proposed substantive and ratemaking issues were appropriate issues within the scope of this proceeding. However, San Gabriel opposed inclusion of the Cal Advocates' proposed legal issue (compliance with Pub. Util. Code § 10061 and Gov. Code § 37420.5) in the scope of the proceeding.

A prehearing conference (PHC) was held on December 8, 2020, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. At the PHC, parties largely agreed on procedural matters and the substantive and ratemaking issues to be scoped into the proceeding. However, parties continued to disagree on whether compliance with Pub. Util. Code § 10061 and Gov. Code § 37420.5 should be in the scope and subject to threshold legal briefing.

Following discussion at the PHC, the assigned Administrative Law Judge (ALJ) issued a ruling on December 11, 2020, directing the filing of briefs on statutory compliance (Statutory Compliance Ruling). On December 23, 2020, Montebello filed a motion for party status, which was granted via ALJ ruling on January 4, 2021. Parties filed opening briefs on compliance with statutory requirements on January 14, 2021, and reply briefs on January 28, 2021. The assigned commissioner issued a Scoping Memo and Ruling (Scoping Memo) on

June 16, 2021, setting forth the issues, need for hearing, schedule, category, and other matters.

2. Issues Before the Commission

The Scoping Memo identified the following issues to be determined in this proceeding:

1. Whether the Proposed Acquisition complies with statutory requirements, including Pub. Util. Code § 10061 and Gov. Code § 37420.5;
2. Whether the Proposed Acquisition will serve the public interest;
3. What the appropriate rate base value is for the acquired water system and how to appropriately calculate that value;
4. Whether the proposed rates to be charged to former City of MWS customers are just and reasonable;
5. Whether San Gabriel is financially qualified to acquire the City of Montebello's water system assets; and
6. Whether San Gabriel is qualified to operate the City of Montebello's water system.

This decision resolves the first issue above, which the Scoping Memo identified as a threshold legal issue appropriately within the scope of this proceeding.

3. Applicable Legal Framework

As noted by the Applicant, San Gabriel filed the instant Application pursuant to Pub. Util. Code §§ 2718 through 2720, seeking Commission authorization to purchase Montebello's water system assets, and other related approvals. Montebello contends that its proposed sale of the MWS assets within the City limits is pursuant to Gov. Code § 37420.5, and its proposed sale of the MWS assets outside of its City limits (in neighboring municipalities) would be

pursuant to Pub. Util. Code § 10061.⁵ The applicable legal framework is set forth below.

3.1. Pub. Util. Code §§ 2719-2750

In 1997, Pub. Util. Code §§ 2718 et seq., the Public Water System Investment and Consolidation Act (Consolidation Act) was enacted. The Consolidation Act recognized that water systems are faced with the need to replace or upgrade aging and sometimes inadequate or failing water infrastructure to meet increasingly stringent state and federal safe drinking water regulations and declared, among other things, that “scale economies are achievable in the operation of public water systems,” and that “providing water corporations with an incentive to achieve these scale economies will provide benefits to ratepayers.” Pub. Util. Code § 2720, *inter alia*, directs the Commission to “use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation” and to use the definition of “fair market value” “as set forth in Section 1263.320 of the Code of Civil Procedure.”⁶

3.2. Pub. Util. Code § 10061

In general, Pub. Util. Code § 10061 procedure applies to the acquisition of municipal utilities. Pub. Util. Code § 10061 requires any municipality seeking to sell its water system to first hold a special election in which voters

⁵ Montebello Opening Brief at 8.

⁶ California Code of Civil Procedure § 1263.320(a), defines fair market value as:

...the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

determine whether to approve the proposed acquisition.⁷ If voters approve the proposed acquisition, and if the acquiring utility is a Commission-regulated entity, the acquiring utility can then proceed to submit the proposed acquisition to the Commission for approval pursuant to Pub. Util. Code § 451 and the Pub. Util. Code § 2720 requirement for the Commission to establish a rate base value.⁸

3.3. Gov. Code § 37420.5

In 2018, legislation codified Gov. Code § 37420.5 which provided the Cities of El Monte, Montebello, and Willows a potential separate path to sell their water systems without holding a special election, required under Pub. Util. Code § 10061. Government Code § 37420.5(a) provides, in part, as follows:

... the City of El Monte, the City of Montebello, and the City of Willows may sell its public utility for furnishing water service pursuant to this article for the purpose of consolidating its public water system with another public water system only if the potentially subsumed public water system is *wholly within the boundaries of the city* and if the city determines that it is uneconomical and not in the public interest to own and operate the public utility for furnishing water service, subject to all of the following requirements.... [*emphasis added.*]⁹

The above alternate sale procedure under Gov. Code § 37420.5 requires that the three named cities hold a protest period wherein they consider any oral

⁷ § 10061(c)(1).

⁸ See e.g., A.18-09-013, Application for Order Authorizing California-American Water Company (U-210- W) to Purchase Bellflower Municipal Water System's Assets and for Related Approvals; A.18-05-011, In the Matter of the Application Liberty Utilities (Park Water) Corp. (U313W) for an Order Authorizing Liberty Utilities (Park Water) Corp. to Purchase the City of Perris's Municipal Water Systems.

⁹ Gov. Code § 37420.5(a).

or written protests to the sale of the municipal water system.¹⁰ If protests opposing an acquisition are filed by 10% or more of “interested persons” the City seeking to sell its public water system is required to hold an election.¹¹ Gov. Code § 37420.5 defines “interested persons” as “a person who is a resident of the city proposing to sell its public utility pursuant to this section.”¹²

4. Statutory Compliance

The Statutory Compliance Ruling directed the parties to this proceeding to file opening and reply briefs addressing the following questions:

1. Identify all relevant statutes the Commission must consider in evaluating the merits of the Application and describe how the Application complies or fails to comply with each of those identified statutes; and
2. If you have not identified and discussed Gov. Code § 37420.5 and Pub. Util. Code § 10061 as statutes the Commission must consider, in response to the question #1 above, explain why the Commission need not consider them in evaluating the merits of the Application.

Opening briefs were filed by San Gabriel, Montebello, and Cal Advocates on January 14, 2021. Reply briefs were filed by the same parties on January 28, 2021.

4.1. Positions of the Parties

In opening briefs, both San Gabriel and Montebello contend that the Commission does not need to consider compliance with Gov. Code § 37420.5 and Pub. Util. Code § 10061 in this proceeding.

¹⁰ Gov. Code § 37420.5(a)(8)(A).

¹¹ Gov. Code § 37420.5(a)(8)(C)(i).

¹² Gov. Code § 37420.5(a)(8)(C)(iii).

Central to the arguments advanced by San Gabriel and by Montebello is the proposition that the Commission would be exceeding its authority, if the Commission chose to consider whether the Proposed Acquisition complied with Pub. Util. Code § 10061 and Gov. Code § 37420.5.¹³ Montebello contends that neither statute explicitly calls for Commission approval of the sale of a municipal water system to a public utility, as all relevant requirements address actions and conditions that a municipality must meet in order to sell its water system.¹⁴ San Gabriel asserts that it is “outside the ambit of the Commission’s role and authority to insert itself into the role of adjudicating the City’s compliance with those statutes or to second-guess the City Council’s official actions.”¹⁵

While Montebello and San Gabriel contend that Commission need not examine compliance with Pub. Util. Code § 10061 and Gov. Code § 37420.5, they also posit an alternate argument. They argue that the Proposed Acquisition does in fact comply with Gov. Code § 37420.5 and Pub. Util. Code § 10061; and therefore, the Commission should evaluate the Application on its merits even if the Commission concludes that authorization of the Proposed Acquisition is conditioned on statutory compliance. San Gabriel argues that the City Council’s unanimous adoption of findings that the City complied with applicable statutory requirements establishes the validity of its actions.¹⁶ Montebello contends that it is authorized to sell the MWS assets within the City limits pursuant to Gov. Code § 37420.5, while those in neighboring municipalities can be sold pursuant to Pub.

¹³ San Gabriel Opening Brief at 4; Montebello Opening Brief at 3-5.

¹⁴ Montebello Opening Brief at 4-5.

¹⁵ San Gabriel Opening Brief at 4.

¹⁶ San Gabriel Opening Brief at 4-5.

Util. Code § 10061, asserting that “there is no bar against leasing, selling or transferring [MWS] via both” statutes.¹⁷

In its opening brief, Cal Advocates contends that because San Gabriel and Montebello rely on Gov. Code § 37420.5 and Pub. Util. Code § 10061 for the authority to conduct the Proposed Acquisition, the Commission must consider compliance with those statutes before reaching the merits of the Application.¹⁸ Cal Advocates further contends that Montebello failed to fully comply with the statutes; therefore the Commission cannot authorize the Proposed Acquisition.

Cal Advocates’ argument rests on three key claims. First, Cal Advocates contends that because the Proposed Acquisition must be submitted to the Commission for review and approval establish the rate base value pursuant to Pub. Util. Code § 2720 and to consolidate the newly acquired system with a utility’s existing operations pursuant to Gov. Code § 37420.5, the Commission has authority to examine whether the Proposed Acquisition complies with statute.¹⁹ Cal Advocates cites to recent Commission precedents that establish this statutory review, including Decision (D.) 20-08-047 (requiring utilities to include documents demonstrating compliance with Pub. Util. Code § 10061 in water utility acquisitions) and the Commission’s action in A.18-05-011, in which assigned ALJ in that proceeding found that a utility cannot proceed with an acquisition where it has not complied with Pub. Util. Code § 10061.²⁰

Second, Cal Advocates claims that the plain language of the Gov. Code § 37420.5 requires that the water system being sold be wholly within the

¹⁷ Montebello Opening Brief at 8.

¹⁸ Cal Advocates Opening Brief at 4.

¹⁹ Cal Advocates Opening Brief at 12.

²⁰ Cal Advocates Opening Brief at 14.

boundaries of the selling municipality.²¹ Because MWS is not wholly within the boundaries of Montebello but instead serves customers in the neighboring municipalities of Commerce and Rosemead (a fact that San Gabriel and Montebello do not contest), Cal Advocates concludes that Gov. Code § 37420.5 does not authorize the transaction. Cal Advocates also cites documents forming the legislative history of Gov. Code § 37420.5, contending that the inclusion of the phrase “wholly within” was intentional and had the cognizable purpose of ensuring that all customers had access to the statute’s protest provisions.²²

Third, Cal Advocates highlights Montebello’s previous effort to sell MWS pursuant to Pub. Util. Code § 10061, which required a special election under Pub. Util. Code § 10061(c)(3). Voters did not approve the proposed 2016 sale and therefore Montebello was unable to proceed. In this Application, San Gabriel and Montebello instead rely on Gov. Code § 37420.5 and Pub. Util. Code § 10061(b), the latter of which permits the sale of municipal water system assets outside the municipal boundaries under certain condition. In its reply brief, Cal Advocates asserts that combining the two statutes to permit the sale of the entirety of MWS would render the phrase “wholly within the boundaries of the city” in Gov. Code § 37420.5 “meaningless and inoperative,” violating basic principles of statutory construction.²³

4.2. The Commission Must Consider Statutory Compliance as a Threshold Legal Issue

Here, the threshold issue is whether the Commission must first review the Proposed Acquisition to determine its compliance with Gov. Code § 37420.5 and

²¹ Cal Advocates Opening Brief at 7.

²² Cal Advocates Opening Brief at 5.

²³ Cal Advocates Reply Brief at 3-4.

Pub. Util. Code § 10061. San Gabriel and Montebello claim that the Commission lacks jurisdiction or authority to examine whether the Proposed Acquisition complies with Gov. Code § 37420.5 and Pub. Util. Code § 10061, while Cal Advocates asserts that the Commission has authority to examine compliance and in fact must make a determination on statutory compliance before it proceeds to a decision on the merits of the Application. As discussed below, we conclude that the Commission does in fact have the authority to consider whether or not the Proposed Acquisition complies with Gov. Code § 37420.5 and Pub. Util. Code § 10061.

The Commission's authority to oversee investor-owned utilities is broad and wide-ranging. In this proceeding, San Gabriel requests that the Commission exercise its broad authority to approve the Proposed Acquisition, extend its CPCN to include a new service territory, and to deem the rates it proposes to charge for prospective ratepayers just and reasonable. That request is for the Commission to exercise its broad authority to grant San Gabriel monopoly water provision in a new service territory and fix charges for ratepayers in that territory. In doing so, it is more than reasonable for the Commission to examine whether the Proposed Acquisition complies with the requirements set out in the applicable statutory frameworks; here, they include Gov. Code § 37420.5 and Pub. Util. Code § 10061. Were the Commission to approve the Application without first examining whether the Proposed Acquisition complies with the applicable laws, it would be a dereliction of the Commission's oversight obligations.

In addition, as Cal Advocates correctly points out, the Commission has previously considered this question in the context of Pub. Util. Code § 10061 and determined that it does in fact have authority to determine whether a transaction

such as the Proposed Acquisition met statutory requirements. Specifically, D.20-08-047 requires all water utility acquisition applications to include documentation of compliance with Pub. Util. Code § 10061.²⁴ Since Gov. Code § 37420.5 provides an alternate pathway for water utility acquisition, as does Pub. Util. Code § 10061, there is no reason that the Commission should not similarly scrutinize the statutory compliance of applications pursuant to Gov. Code § 37420.5.

In sum, it is this Commission's responsibility to provide effective oversight of the public utilities it regulates and to ensure that they comply with the law. As such, when, as here, a question of statutory compliance is raised concerning a transaction that is firmly within the Commission's regulatory sphere, the Commission must make a determination as to whether the Proposed Acquisition complies with the law before considering whether to approve the transaction.

4.3. The Proposed Acquisition Does Not Comply with Gov. Code § 37420.5

As discussed below, we conclude that the Proposed Acquisition does not comply with Gov. Code § 37420.5.

Gov. Code Section 37420.5(a) provides, in part, as follows:

... the City of El Monte, the City of Montebello, and the City of Willows may sell its public utility for furnishing water service pursuant to this article for the purpose of consolidating its public water system with another public water system *only if the potentially subsumed public water system is wholly within the boundaries of the city* and if the city determines that it is uneconomical and not in the public interest to own and operate the public utility for furnishing

²⁴ D.20-08-047, at 84.

water service, subject to all of the following requirements....
[*emphasis added.*]²⁵

Cal Advocates argues that the Proposed Acquisition does not comply with Gov. Code § 37420.5(a) because Montebello's water system is not wholly within the boundaries of Montebello as required by the statute which specifically requires that: "the potentially subsumed public water system is wholly within the boundaries of the city."²⁶

San Gabriel contends that the term "subsumed public water system" should be interpreted to mean the specific water system assets being sold rather than all of Montebello's water system assets.²⁷

A fundamental rule of statutory construction is the "plain meaning rule," which means to interpret the statute to give its words their common and ordinary meaning.²⁸ This is also codified in California Code of Civil Procedures (Cal. Civ. Proc. Code) § 1858 which provides: "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted . . ."²⁹ The California Supreme Court has affirmed this rule time and again:

[I]t is well settled that we must look first to the words of the statute, because they generally provide the most reliable indicator of legislative intent. . . . [I]f the statutory language is clear and unambiguous our inquiry ends. . . . If

²⁵ Gov. Code § 37420.5(a).

²⁶ Cal Advocates Opening Brief at 1.

²⁷ San Gabriel Opening Brief at 13.

²⁸ *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103.

²⁹ See also *Rancho Bernardo Development Co. v. Superior Court*, 2 Cal. App. 4th 358, 363, 2 Cal. Rptr. 2d 878, 880 (4th Dist. 1971), reh'g denied (Jan. 28, 1992).

there is no ambiguity in the language, we presume the Legislature meant what it said and the plain meaning of the statute governs. . . . In reading statutes, we are mindful that words are to be given their plain and commonsense meaning.³⁰

Therefore, our review here starts with the words of the statute. If the language of the statute is clear and unambiguous, we will not, and should not, engage in further statutory construction analysis. In these situations, the language controls, and we would have nothing to interpret or construe.³¹

On the other hand, if the statute is unclear or otherwise ambiguous, which means susceptible of more than one reasonable interpretation, then and only then, we will turn to extrinsic aids to assist in interpretation³² by looking to extrinsic sources, including the ostensible objects to be achieved and the legislative history and intent.³³ In such circumstances, courts must choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences.³⁴ In other words, courts must construe the statutory text in the context of the statute as a whole and the overall statutory scheme, and give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose,³⁵

³⁰ *Ibid.* (citations omitted).

³¹ See e.g., *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1238, 8 Cal. Rptr. 2d 298 (4th Dist. 1992), rev. denied (Aug. 27, 1992).

³² *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th at 1103.

³³ *Smith, supra*, 39 Cal.4th at 83.

³⁴ *Ibid.*

³⁵ *Smith v. Super. Ct.* (2006) 39 Cal.4th at 77, 83.

while interpreting the statute to harmonize within the entire scheme of law of which it is part and to retain effectiveness.³⁶

Here, Cal Advocates argues that the central phrase (“only if the potentially subsumed public water system is wholly within the boundaries of the city”) in Gov. Code § 37420.5(a) is clear and unambiguous. The subject phrase is one of the first requirements for use of Gov. Code § 37420.5 procedure to sell the water system. On its face, we find this phrase to be clear and unambiguous that it is referring to a “public water system” as opposed to a portion thereof. We likewise find that it is also clear and unambiguous that the legislation explicitly provisioned the use of this procedure, such that the subject public water system must be entirely within the boundaries of the city limits. We are simply unpersuaded by San Gabriel’s argument that we read the term “subsumed public water system” to mean any portion of the water system assets Montebello proposes to sell, rather than all of Montebello’s water system. This proposed reading is contrary the plain language of the of the phrase.

Thus, applying the plain meaning rule, there is no statutory interpretation warranted here, and the Proposed Acquisition simply does not comply with a key requirement of that statute that “the potentially subsumed public water system is wholly within the boundaries of the city.” We therefore will not and need not examine the legislative history, intent or other extrinsic evidence to interpret the statute.

In sum, the plain language of Gov. Code § 37420.5(a) requires the water system assets Montebello is selling to be “wholly within the boundaries” of Montebello. Because some of the water system assets Montebello is proposing to

³⁶ *Ibid.*

sell are located outside the boundaries of Montebello and in the cities of Commerce and Rosemead, the Proposed Acquisition does not comply with Gov. Code § 37420.5(a).

4.4. The Proposed Acquisition Does Not Comply with Pub. Util. Code § 10061

San Gabriel is proceeding with the Proposed Acquisition based on its assertion that Gov. Code § 37420.5 applies, and not Pub. Util. Code § 10061(b). However, in response to Cal Advocates' raising the issue of non-compliance with Gov. Code § 37420.5, San Gabriel has asserted an alternate legal theory here, that that the portion of the water system within Montebello can be sold via Gov. Code § 37420.5, while the portions outside Montebello can be sold via Pub. Util. Code § 10061.³⁷ As discussed above, we conclude that the Proposed Acquisition does not comply with Gov. Code § 37420.5; and as discussed below, we conclude that the Proposed Acquisition also fails to comply with Pub. Util. Code § 10061.

Pub. Util. Code § 10061 procedure applies to the acquisition of municipal utilities and requires any municipality seeking to sell its water system to first hold a special election in which voters determine whether to approve the proposed acquisition.³⁸

Here, the Proposed Acquisition also fails to comply with Pub. Util. Code § 10061, because an election has not been held pursuant to Pub. Util. Code § 10061(c)(3) and Montebello has not made the requisite findings pursuant to Pub. Util. Code § 10061(b) and has not proceeded according to that code section.

³⁷ Reply of San Gabriel Valley Water Company (U337W) to Protest of the Public Advocates Office, at p. 3.

³⁸ Pub. Util. Code § 10061(c)(1).

Pursuant to Pub. Util. Code § 10061, the City of Montebello held a special election in 2016 asking voters to decide whether Montebello could sell its water system to San Gabriel. Voters rejected the proposed sale by 51 to 49%, so the sale of Montebello's water system was not authorized by Pub. Util. Code § 10061 and could not proceed to the Commission for approval.

Pub. Util. Code § 10061 allows a municipal corporation to sell a public utility owned by it for furnishing water service, if it complies with the requirements in that code section. Namely, this includes the requirement that the municipality hold a special election wherein residents will vote on the proposal to sell the water system per Pub. Util. Code § 10061(c)(3).³⁹ If the voters approve the sale in the special election, the sale can then proceed to the Commission for approval.⁴⁰

As previously discussed, Montebello has already held an election pursuant to Pub. Util. Code § 10061(c)(3) where voters rejected the proposed sale of the water system. As such, the sale of Montebello's water system could not continue under Pub. Util. Code § 10061(c)(3).

Also as part of its alternate legal theory, San Gabriel has also referred to Pub. Util. Code § 10061(b),⁴¹ which provides that:

Any municipal corporation owning and operating a public utility for furnishing water or sewer service, a part of which or all of which public utility is operated and used for furnishing water or sewer service outside the

³⁹ Pub. Util. Code § 10061(c)(3).

⁴⁰ See e.g., A.18-09-013, Application for Order Authorizing California-American Water Company (U-210-W) to Purchase Bellflower Municipal Water System's Assets and for Related Approvals; A.18-05-011, In the Matter of the Application Liberty Utilities (Park Water) Corp. (U313W) for an Order Authorizing Liberty Utilities (Park Water) Corp. to Purchase the City of Perris's Municipal Water Systems.

⁴¹ San Gabriel Reply to Protest of Cal Advocates, at p. 4.

boundaries of the municipal corporation, may lease, sell, or transfer, for just compensation, all or any part of the portion of the public utility located outside the boundaries of the municipal corporation to any other municipal corporation, public agency, water corporation, or sewer system corporation upon the terms and conditions agreed upon by the selling municipal corporation if, by resolution adopted by a majority of its legislative body, it has determined that the public utility, or portion thereof, is not necessary for supplying water or sewer service to its own inhabitants⁴²

In essence, Pub. Util. Code § 10061(b) allows a municipality to sell its water utility operating outside its boundaries if it has determined that the public utility is not necessary for supplying water to its own inhabitants and adopted a resolution stating as such.

However, Montebello's adopted resolution regarding the sale of its water system specifically references only Gov. Code § 37420.5.⁴³ The resolution explains how the acquisition complies with Gov. Code § 37420.5 (ignoring the "wholly within" requirement) and does not reference Pub. Util. Code § 10061(b) at all.⁴⁴ Further, the resolution does not determine "that the public utility, or portion thereof, is not necessary for supplying water or sewer service to its own inhabitants," as required by Pub. Util. Code § 10061(b).⁴⁵ Moreover, San Gabriel has presented no evidence that an election pursuant to Pub. Util. Code § 10061(c) has been held in Montebello, Rosemead, or Commerce. Finally, San Gabriel's novel theory that it can divide the acquisition between Gov. Code § 37420.5 and

⁴² Pub. Util. Code § 10061(b).

⁴³ Application, at Attachment 6.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

Pub. Util. Code § 10061 would effectively render the requirement of Gov. Code § 37420.5 that the “public water system” must be “wholly within the boundaries of the city” entirely meaningless and inoperative. For the foregoing reasons, we find that the Proposed Acquisition also fails to comply with Pub. Util. Code § 10061 and reject this alternate theory proffered by San Gabriel.

4.5. The Application Should Be Denied Without Prejudice

Because the Proposed Acquisition fails to comply with either Gov. Code § 37420.5 or Pub. Util. Code § 10061, the Commission must deny San Gabriel’s Application without prejudice. However, we make no findings or conclusions regarding the merits of the substantive proposals presented in the Application. San Gabriel is free to renew its request to acquire MWS in a subsequent application provided it can show that the proposed transaction complies with the relevant statutes for acquisition of a municipal water system. Accordingly, we deny the Application without prejudice and close this proceeding.

5. Comments on Proposed Decision

The proposed decision of ALJ Cooke in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission’s Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Michelle Cooke is the assigned ALJ in this proceeding.

Findings of Fact

1. Montebello Water System is not wholly within the boundaries of the City of Montebello.

2. The Commission has the authority to consider whether or not the Proposed Acquisition complies with Gov. Code § 37420.5 and Pub. Util. Code § 10061 and in fact must make a determination on statutory compliance before it proceeds to a decision on the merits of the Application or it would be derelict in its oversight obligations.

3. The Commission has previously considered and determined that it does in fact have authority to determine whether a transaction such as the Proposed Acquisition met statutory requirements in D.20-08-047 which requires all water utility acquisition applications to include documentation of compliance with Pub. Util. Code § 10061.

4. A fundamental rule of statutory construction is the “plain meaning rule,” which means to interpret the statute to give its words their common and ordinary meaning.

5. The “plain meaning rule” is codified in Cal. Civ. Proc. Code § 1858 which provides: “In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted...” and the California Supreme Court has consistently affirmed the “plain meaning rule.”

6. The Proposed Acquisition fails to comply with Pub. Util. Code § 10061 because an election has not been held pursuant to Pub. Util. Code § 10061(c)(3) and Montebello has not made the requisite findings pursuant to Pub. Util. Code § 10061(b) to proceed according to that code section.

7. Pursuant to Pub. Util. Code § 10061, the City of Montebello held a special election in 2016 asking voters to decide whether Montebello could sell its water system to San Gabriel; and the voters rejected the proposed sale by 51 to 49%, so

the sale of Montebello's water system was not authorized by Pub. Util. Code § 10061.

8. Montebello's adopted resolution regarding the sale of its water system specifically references only Gov. Code § 37420.5; the resolution explains how the acquisition complies with Gov. Code § 37420.5 (ignoring the "wholly within" requirement) and does not reference Pub. Util. Code § 10061(b) at all; and the resolution does not determine "that the public utility, or portion thereof, is not necessary for supplying water or sewer service to its own inhabitants," as required by Pub. Util. Code § 10061(b).

9. San Gabriel presented no evidence that an election pursuant to Pub. Util. Code § 10061(c) has been held in Montebello, Rosemead, or Commerce.

10. San Gabriel's novel theory that it can divide the acquisition between Gov. Code § 37420.5 and Pub. Util. Code § 10061 would effectively render the requirement of Gov. Code § 37420.5 that the "public water system" must be "wholly within the boundaries of the city" entirely meaningless and inoperative.

11. The Commission's authority to oversee investor-owned utilities is broad and wide-ranging.

Conclusions of Law

1. Compliance with Government Code § 37420.5 and Public Utilities Code § 10061 are prerequisites for the Commission to authorize the Proposed Acquisition by San Gabriel.

2. The Commission should examine and determine whether the Proposed Acquisition complies with Gov. Code § 37420.5 and Pub. Util. Code § 10061 before considering whether to approve the Proposed Acquisition transaction.

3. The City of Montebello failed to comply with the statutory requirements of Gov. Code § 37420.5 and Pub. Util. Code § 10061.

4. The phrase “only if the potentially subsumed public water system is wholly within the boundaries of the city” in Gov. Code § 37420.5(a) is clear and unambiguous; therefore we should not examine the legislative history, intent or other extrinsic evidence to interpret Gov. Code § 37420.5.

5. We should reject San Gabriel’s argument that we read the term “subsumed public water system” to mean any portion of the water system assets Montebello proposes to sell, rather than all of Montebello’s water system, as unreasonable and contrary the plain language of that phrase in Gov. Code § 37420.5(a).

6. The Proposed Acquisition does not comply with the requirement of Gov. Code § 37420.5(a) that “the potentially subsumed public water system is wholly within the boundaries of the city.”

7. The plain language of Gov. Code § 37420.5(a) requires the water system assets Montebello is selling to be wholly within the boundaries of Montebello.

8. Permitting Montebello to sell MWS assets outside the municipal limits pursuant to Gov. Code § 37420.5 would render the language in Gov. Code § 37420.5(a) requiring the water system to be wholly within the selling municipality meaningless and inoperative.

9. The Application should be denied, without prejudice; and this decision should not reach consideration of the proposed sale on the merits.

10. Application 20-10-004 should be closed.

O R D E R

IT IS ORDERED that:

1. Application 20-10-004 is denied without prejudice.
2. Application 20-10-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.